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* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ RSA 27/2015

ANAND NARAYAN

..... Appellant

Through: Mr. H.S. Dahiya, Advocate.

versus

UNION OF INDIA & ORS

..... Respondents

Through: Mr. Ruchir Mishra & Mr. Mukesh
Kumar Tiwari, Advocates.

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

ORDER

05.11.2015

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1. Admit.

2. The following substantial question of law arises for consideration in the present appeal:

"Whether the finding returned by the First Appellate Court that suit of the appellant/ plaintiff was barred and the appellant should have challenged the final order of the reviewing authority in writ proceedings, is not perverse?"

3. I have heard learned counsel for the parties and proceed to dispose of the matter.

4. The present second appeal, which is directed against the judgment dated 17.09.2014 passed by the learned District & Sessions Judge (South-

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East), Saket Courts, New Delhi in RCA No.3/2014 raised the aforesaid issue in the background that the appellant had filed the suit for declaration in respect of the punishment inflicted upon him vide order dated 08.03.2008. The appellant had also assailed the order dated 22.05.2008 passed by the appellate authority and the order dated 22.06.2009 passed by the revisional/ reviewing authority.

5. The appellant, who was serving as a Sub-Inspector in the Central Industrial Security Force (CISF), was removed from service after being found guilty of misconduct in a disciplinary proceeding. The Trial Court vide judgment dated 30.07.2013 had decreed the appellant's suit and held the aforesaid orders to be illegal, null & void. The Trial Court had directed that the appellant/ plaintiff be treated as continuing in service w.e.f. 08.03.2008 with all consequential service and monetary benefits.

6. The respondents then preferred the aforesaid first appeal being RCA No.3/2014, which has been allowed by the First Appellate Court. The only premise on which the said appeal has been allowed is that the proper recourse for challenging the final order of the revisional/ reviewing authority was to challenge the same before the High Court in writ proceedings. It was held that the declaration or a parallel inquiry or appraisal of evidence by a Civil Court is not an order. It was further held that judicial review of such an order should normally be not entertained even by the superior Courts in view of the decision of the Supreme Court in *B.C. Chaturvedi Vs. Union of India & Others*, (1996) 1 SC Service Law Judgments 9.

7. The submission of learned counsel for the appellant is that admittedly

there is no statutory bar to the maintainability or the filing of the suit for declaration. The appellant, being an employee of the CISF, could neither have moved the Central Administrative Tribunal (CAT), as the CISF is not a notified organisation to be covered within the jurisdiction of the CAT, nor the Armed Forces Tribunal. The only remedy available to the appellant was either to file a civil suit for declaration, or to file a writ proceeding. Learned counsel submits that the right to file the civil suit cannot be denied and the principle, which is applicable to maintainability of writ proceedings, namely whether the petitioner has an alternative efficacious remedy, did not apply in respect of a civil suit, which can be maintained as a matter of right.

8. Learned counsel for the respondent really has no submission to advance as the aforesaid submission of the appellant reflects the correct legal position.

9. A perusal of the impugned judgment shows that the First Appellate Court is clearly reeling under a misimpression. Merely because a writ proceeding is maintainable, and is the generally preferred remedy to assail orders passed in disciplinary proceedings - in cases where such proceedings are maintainable, it does not mean that it is not open to an aggrieved employee to file a civil suit for the same relief. Under section 9 CPC, a civil suit can be filed, and the civil court has jurisdiction, to try all suits of a civil nature, excepting suits of which cognizance is either expressly or impliedly barred. Admittedly, there is neither an express, nor an implied bar in law to the maintainability of the suit in the present case. The scope of judicial interference would remain the same whether the proceedings are by way of a civil suit, or by way of a writ proceeding under Article 226 of the

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Constitution of India. Merely because the aggrieved employee prefers a civil suit, it does not mean that the scope of interference of the orders passed in disciplinary proceedings would get enlarged.

10. Accordingly, the impugned judgment is set aside and the appeal is remanded back to the First Appellate Court for hearing on merits.

11. The parties shall appear before the First Appellate Court on 07.12.2015.

12. The Trial Court Record be sent back to the First Appellate Court.

13. The appeal stands disposed of in the aforesaid terms.


VIPIN SANGHI, J

NOVEMBER 05, 2015
B.S. Rohella